

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
Applications for the Assignment of License from) WT Docket No. 06-114
Denali PCS, L.L.C. to Alaska DigiTel, L.L.C.)
and the Transfer of Control of Interests in Alaska)
DigiTel, L.L.C. to General Communication, Inc.)
)
)

ERRATUM

Released: January 23, 2007

By the Chief, Wireless Telecommunications Bureau:

On December 22, 2006, the Wireless Telecommunications Bureau released a Memorandum Opinion and Order (“Order”), FCC 06-185 in the above-captioned proceeding. This Erratum corrects the Order as follows.

Paragraphs 33-35 are revised to read:

33. The Applicants argue that in the *ALLTEL-Western Wireless Order* the Commission concluded that the relevant market participants were facilities-based cellular, PCS, and SMR carriers.¹¹² Further, they assert that a reseller is unable to develop new or innovative services and its ability to price competitively is based on the rate it pays to the underlying facilities-based carrier.¹¹³ They also argue that, if the Commission counted resold spectrum against an applicant, it would undermine a reseller’s ability to become a facilities-based mobile telephony provider.¹¹⁴ Thus, the Applicants contend that spectrum on which a carrier has resale rights should not be considered attributable for purposes of a competitive analysis.¹¹⁵ Under Commission precedent, we generally limit our competitive analysis to facilities-based carriers,

¹¹² Applicants March 1, 2006 Joint Opposition at 12; *see also ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13071 ¶ 39.

¹¹³ Applicants March 1, 2006 Joint Opposition at 12-13; Applicants September 13, 2006 Joint Response at 15, 17-18.

¹¹⁴ Applicants August 8, 2006 Joint Opposition at 16.

¹¹⁵ Applicants March 1, 2006 Joint Opposition at 13; Applicants August 8, 2006 Joint Opposition at 15-16; Applicants September 13, 2006 Joint Response at 17.

either nationwide or regional, excluding MVNOs and resellers from consideration when computing initial concentration measures. The Commission has acknowledged, however, that non-facilities based service options have an impact in the marketplace and in some instances may provide additional constraints against anti-competitive behavior.¹¹⁶

34. Our review of the *Resale Agreement* between GCI and Dobson indicates that GCI is limited in its ability to set price and to offer innovative and new products and services and does not have the ability to constrain anti-competitive behavior in the relevant markets.¹¹⁷ Specifically, the *Resale Agreement* prohibits GCI from: [REDACTED]¹¹⁸ [REDACTED]¹¹⁹ [REDACTED].¹²⁰ There is also no difference in either GCI's or Dobson's network coverage footprint which is often an important differentiation between mobile telephony carriers.¹²¹ Finally, even though the *Resale Agreement* allows for non-price product differentiation by GCI through [REDACTED], we find that this limited amount of non-price product differentiation does not allow GCI to significantly impact the market.¹²² MTA Wireless and ACS Wireless, after reviewing the *Resale Agreement*, also acknowledge that GCI will not compete with Dobson on [REDACTED].¹²³

35. In sum, after review of the *Resale Agreement*, we do not find that GCI should be considered the competitive equivalent of a facilities-based carrier. For purposes of this transaction, consistent with Commission precedent, we exclude GCI's subscribers from the combined entity's total when computing initial measures of market concentration. Nevertheless, because non-facilities based service options such as those offered by GCI throughout its *Resale Agreement* with Dobson may have some impact in the marketplace,¹²⁴ we consider the role of MVNOs and resellers in our analysis of the likely competitive effects of this transaction.¹²⁵

¹¹⁶ See *DoCoMo-Guam Cellular Order*, FCC 06-167 at 17 ¶ 22; *ALLTEL-Midwest Wireless Order*, FCC 06-146 at 19 ¶ 33; *Sprint-Nextel Order*, 20 FCC Rcd at 13991 ¶ 58; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13070-71 ¶¶ 38-39; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21563 ¶ 92. To date, in evaluating mergers among wireless carriers, the Commission has not included resellers or MVNOs in its initial screen.

¹¹⁷ See generally *Resale Agreement*.

¹¹⁸ *Resale Agreement* at Art. I, 3(b)(iv), 3(c).

¹¹⁹ *Resale Agreement* at Art. I, 2(a).

¹²⁰ [REDACTED] *Resale Agreement* at Art. I, 3(b)(iii).

¹²¹ *Resale Agreement* at Art. I, 2(a). See also *Eleventh Competition Report*, FCC 06-142 at ¶¶ 130-135; *Sprint-Nextel Order*, 20 FCC Rcd at 14002 ¶ 95; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13077 ¶ 59; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21573 ¶ 125.

¹²² *Resale Agreement* at Art. I, 2(a)(iii), 3(c), 3(d), 3(e). [REDACTED] *Resale Agreement* at Art. I, 3(d). GCI awards a bonus number of miles for signing a contract as well as awards one mile for every dollar spent on mobile telephony service. See <http://www.gci.com/forhome/cellular/gsmfactsbenefitsfaq.htm> (last visited Dec. 15, 2006).

¹²³ MTA Wireless July 24, 2006 Comments at 11, 17 [REDACTED]. ACS Wireless September 6, 2006 Comments at 10 [REDACTED].

¹²⁴ *Sprint-Nextel Order*, 20 FCC Rcd at 13991 ¶ 58; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13070-71 ¶ 38; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21563 ¶ 92.

¹²⁵ See Section IV.B.3, *infra*.

Paragraph 41 is revised to read:

41. MTA Wireless contends that the Commission should attribute 125 MHz of spectrum to GCI. This would include: (1) all 30 MHz of GCI's B-block PCS license; (2) Alaska DigiTel's 30 MHz of spectrum holdings post-transaction (the 15 MHz A-block PCS license and Denali's 15 MHz A-block PCS license that Alaska DigiTel would acquire from Denali); (3) Dobson's 55 megahertz of spectrum (both its 25 MHz cellular license and its 30 MHz C-block PCS license in Anchorage);¹³⁸ and (4) 10 MHz of PCS spectrum in Anchorage held by SprintCom, a Sprint Nextel subsidiary.¹³⁹ In particular, MTA Wireless argues that Dobson's spectrum should be attributed to GCI because the GCI-Dobson resale agreement essentially makes GCI and Dobson technical and operational partners,¹⁴⁰ and contends that the SprintCom spectrum should be attributed because of roaming and service agreements that SprintCom currently has with Alaska DigiTel to serve Sprint Nextel customers.¹⁴¹ ACS Wireless, meanwhile, contends that the Commission should attribute 115 MHz of spectrum to GCI, generally agreeing with MTA Wireless's contentions with respect to attributing GCI's 30 MHz, Alaska DigiTel's 30 MHz, and Dobson's 55 MHz of spectrum to GCI.¹⁴² MTA Wireless and ACS Wireless ask the Commission to deny the applications or designate the applications for an evidentiary hearing.¹⁴³ ACS Wireless and MTA Wireless further contend that, if the Commission grants the applications, it should order GCI to divest spectrum.¹⁴⁴

Paragraph 44 is revised to read:

44. *GCI's 30 MHz of PCS spectrum.* The Applicants contend that, for purposes of the Commission's review of spectrum aggregation, only 20 of the 30 MHz of the spectrum that GCI currently holds under its PCS license should be attributed to GCI because it is leasing 10 MHz of its PCS spectrum to Dobson pursuant to a long-term *de facto* transfer spectrum leasing arrangement.¹⁴⁷ MTA Wireless and ACS Wireless disagree, arguing that the Commission should attribute all 30 MHz of GCI's B-block PCS license to GCI.¹⁴⁸

¹³⁸ MTA Wireless Petition to Deny at 9-11; MTA Wireless July 24, 2006 Comments at 19; MTA Wireless September 6, 2006 Comments at 22.

¹³⁹ MTA Wireless August 2, 2006 Comments at 4; MTA Wireless September 6, 2006 Comments at 27.

¹⁴⁰ MTA Wireless July 24, 2006 Comments at 12-14.

¹⁴¹ MTA Wireless August 2, 2006 Comments at 4; MTA Wireless September 6, 2006 Comments at 27.

¹⁴² ACS Wireless July 21, 2006 Comments/Petition at 6, 8-9; ACS Wireless September 6, 2006 Comments at 15-17; MTA Wireless August 2, 2006 Comments at 4-5.

¹⁴³ MTA Wireless Petition to Deny at 2, 7, 15; MTA Wireless December 4, 2006 Comments at 1; ACS Wireless July 21, 2006 Comments/Petition at 5, 20.

¹⁴⁴ ACS Wireless July 21, 2006 Comments/Petition at 5, 20; MTA Wireless August 2, 2006 Comments at 10-11. MTA Wireless argues that this capacity should be made available for lease or acquisition. MTA Wireless December 4, 2006 Comments at 5.

¹⁴⁷ Application Exhibit 1 at 4; Applicants March 1, 2006 Joint Opposition at 10-11; Applicants August 8, 2006 Joint Opposition at 22-23. The Applicants argue that the 10 MHz of spectrum leased to Dobson should not be attributed to GCI. This spectrum was first leased pursuant to a spectrum manager lease. *See* Notification of Spectrum Manager Lease between Dobson and GCI, File No. 0001825292 (filed July 30, 2004);. Application Exhibit 1 at 4. We note, however, that GCI subsequently filed a long-term *de facto*

Paragraph 47 is revised to read:

47. The parties have submitted extensive pleadings in support of their respective contentions. Specifically, MTA Wireless contends that GCI would be obtaining both *de jure* and *de facto* control of

Alaska DigiTel and thus should be attributed with its 30 MHz of spectrum.¹⁵² MTA Wireless cites to provisions in the *Operating Agreement* to support its claim that GCI would have *de facto* control of Alaska DigiTel – including GCI’s majority equity position, GCI’s veto rights over major managerial decisions, GCI’s veto power over the adoption of Alaska DigiTel’s annual budget, and GCI’s right to acquire the remaining minority ownership interest in Alaska DigiTel.¹⁵³ ACS Wireless agrees with MTA Wireless’s arguments about attributing Alaska DigiTel spectrum to GCI because of the degree of interest it would be acquiring in Alaska DigiTel.¹⁵⁴ In addition, ACS Wireless contends that GCI’s investor presentation at its 2006 annual stockholder meeting suggested that it planned to manage and/or develop Alaska DigiTel as part of GCI’s own business strategy.¹⁵⁵ ACS Wireless and MTA Wireless recommend that the Commission adopt conditions that would prevent GCI from exercising control over Alaska DigiTel.¹⁵⁶

(continued from previous page) transfer lease application and is currently leasing this spectrum along with an additional 2 MHz of spectrum to Dobson pursuant to a long-term *de facto* transfer leasing arrangement. *See* Application for Dobson to *De Facto* Transfer Lease Spectrum held by GCI, File No. 0002134968 (filed April 22, 2005).

¹⁴⁸ MTA Wireless Petition to Deny at 10; ACS Wireless July 21, 2006 Comments/Petition at 6 n.21. Among other things, MTA Wireless argues that the current GCI/Dobson spectrum leasing arrangement is limited to three years, and expires in approximately 30 months, and thus the Commission should continue to attribute it to GCI. MTA Wireless Petition to Deny at 10. [REDACTED]. GCI will have access to the spectrum it leases to Dobson in the long run. ACS Wireless July 21, 2006 Comments/Petition at 6 n.21.

¹⁵² MTA Wireless March 13, 2006 Reply at 4-9; MTA Wireless July 24, 2006 Comments at 3-9, 18; MTA Wireless September 6, 2006 Comments at 3-20; MTA Wireless December 4, 2006 Comments at 2. For instance, MTA Wireless argues that the Commission should apply its traditional rules governing *de jure* and *de facto* control of the post-transaction licenses and conclude that GCI will have both. MTA Wireless July 24, 2006 Comments at 5-9, 18 (discussing various control analyses, including Application of Baker Creek Communications, L.P., DA 98-1921, *Memorandum Opinion and Order*, 13 FCC Rcd 18709 (1998)).

¹⁵³ MTA Wireless July 24, 2006 Comments at 3-9, 18; MTA Wireless September 6, 2006 Comments at 12- 18. MTA Wireless argues that by exercising control over Alaska DigiTel’s budget, GCI will effectively be able to control the identification and funding of all the operational aspects of Alaska DigiTel. Further, MTA Wireless contends that GCI, through its unconditional right to acquire the remaining minority interest in Alaska DigiTel, will be able to exercise control because if the Board of Managers chooses to defy GCI, GCI will be able to buy them out. MTA Wireless July 24, 2006 Comments at 7, 10-11.

¹⁵⁴ ACS Wireless July 21, 2006 Comments/Petition at 4, 6-8; ACS Wireless September 6, 2006 Comments at 2, 4, 24 -28; ACS Wireless December 4, 2006 Comments at 3.

¹⁵⁵ ACS Wireless July 21, 2006 Comments/Petition at 8, Exhibit B (noting that, at the presentation, GCI included Alaska DigiTel’s subscribers in its wireless subscriber count and presented the wireless sector, including Alaska DigiTel, as a major growth area).

¹⁵⁶ These conditions include eliminating GCI’s ability to veto certain Alaska DigiTel managerial decisions, eliminating GCI’s right to requiring the remaining interest in Alaska DigiTel, and prohibiting GCI from consolidating Alaska DigiTel’s financial statements with its own. ACS Wireless September 6, 2006 Comments at 36-37; ACS Wireless December 4, 2006 Comments at 4-5; MTA Wireless December 4, 2006 Comments at 3.

Paragraphs 51-57 are revised to read:

51. Specifically, MTA Wireless and ACS Wireless contend that all of Dobson's spectrum holdings should be attributed to GCI due to the 2004 *Resale Agreement*, its companion *Letter of Intent*, and the *Lease Agreements*. MTA Wireless and ACS Wireless argue that these agreements reveal a collaborative relationship that encompasses Dobson's access to GCI's spectrum through leasing and GCI's reliance on Dobson's platform and reselling of Dobson's wireless services without the need to build its own infrastructure. They also allege that the *Resale Agreement* establishes close and strategic cooperation with regard to [REDACTED], and thus shows that GCI and Dobson are not acting as competitors but instead as partners. MTA Wireless and ACS Wireless assert that the *Letter of Intent* further substantiates the alleged collaborative relationship evidenced by the *Resale Agreement*.¹⁶³ The *Letter of Intent*, executed at the same time as the *Resale Agreement*, sets forth an additional agreement between GCI and Dobson to engage in further discussions and good faith negotiations on possible future cooperative arrangements, including [REDACTED].¹⁶⁴ Finally, MTA Wireless and ACS Wireless contend that the close relationship has been constructed with the express prospect of GCI ultimately acquiring Dobson's wireless assets in Alaska.¹⁶⁵ MTA Wireless and ACS Wireless request that the Commission broaden its previous general information request to require Applicants to produce all other documents that might exist between GCI and Dobson relating to possible cooperation.¹⁶⁶ Further, ACS Wireless requests that the Commission require GCI to end any further negotiations with Dobson regarding matters (discussed above) referenced in the *Letter of Intent*.¹⁶⁷ Finally, MTA Wireless requests that the Commission condition approval of this transaction on elimination of several elements in the *Resale Agreement*.¹⁶⁸

52. The Applicants present several arguments as to why Dobson's spectrum should not be attributed to GCI. The Applicants contend that there is no legal precedent for MTA Wireless's and ACS Wireless's position and that the Commission has never considered resale agreements when assessing spectrum aggregation, stating that the Commission's focus generally is on assessing facilities-based competition in the market. They assert that, as a reseller of Dobson's services, GCI neither owns nor controls any of Dobson's network facilities, and is beholden to Dobson for all critical aspects of service deployment, including [REDACTED]. They state that if an applicant acting as a reseller is attributed with the spectrum associated with a resale of mobile telephony services, then the Commission would be undermining the ability of the reseller to become a facilities-based provider in its own right. As for collaboration, the Applicants state that the general cooperation procedures are necessary features of a reseller agreement and are appropriately designed to give the reseller notice of network changes and input on certain

¹⁶³ MTA Wireless July 24, 2006 Comments at 9-18; MTA Wireless September 6, 2006 Comments at 21-25; MTA Wireless September 25, 2006 Comments 1-5; MTA Wireless December 4, 2006 Comments at 3; ACS Wireless July 21, 2006 Comments/Petition at 9; ACS Wireless September 6, 2006 Comments at 8-12, 16-18; ACS Wireless September 27, 2006 Comments at 1-6; ACS Wireless December 4, 2006 Comments at 2-3.

¹⁶⁴ See generally *Letter of Intent*.

¹⁶⁵ MTA Wireless September 6, 2006 Comments at 24-25; ACS Wireless September 6, 2006 Comments at 11-12.

¹⁶⁶ MTA Wireless September 25, 2006 Comments at 4-5; ACS Wireless September 6, 2006 Request for Supplemental Documents at 1-3; ACS Wireless September 27, 2006 Comments at 5.

¹⁶⁷ ACS Wireless September 27, 2006 Comments at 6-7; MTA Wireless December 4, 2006 Comments at 4.

¹⁶⁸ These elements include [REDACTED] and the "other cooperative arrangements" that are parts of the *Resale Agreement*. MTA Wireless December 4, 2006 Comments at 4.

operational issues.¹⁶⁹ As regards the good faith negotiations discussed in the Letter of Intent, GCI states that there has been no progress on any of these topics and argues that this verifies that GCI and Dobson are acting independently and on an arms-length basis.¹⁷⁰ Finally, the Applicants point out that any later effort by GCI to acquire Dobson's Alaska properties would have to be approved by the Commission.¹⁷¹

53. We are not persuaded that Dobson's spectrum should be attributed to GCI for purposes of our competitive analysis. Such a decision would depart from Commission practice not to attribute spectrum associated with a resale of mobile telephony services to the reseller.¹⁷² As discussed above, as a general matter the Commission has not considered resellers to be competitors for purposes of conducting the initial screen. A reseller generally does not have the ability to control price, service, coverage, or contract terms, and our examination of the Resale Agreement and the Letter of Intent establishes [REDACTED].¹⁷³ Further, in contrast to its ownership interest in Alaska DigiTel (where we attribute Alaska DigiTel's spectrum, as discussed above), GCI holds no ownership interest in Dobson, and thus does not have any of the influence over Dobson that would be associated with ownership interests. Consistent with our determination above that GCI not be considered the competitive equivalent of a facilities-based carrier, we would not expect that GCI in its role as reseller would act as a full competitor with Dobson.

54. After examining these agreements, we find that nothing in them changes the fact that GCI, a reseller, does not have control over Dobson's spectrum or its business decisions related to use of that spectrum. As Applicants suggest, significant cooperation and communication between Dobson and its reseller is appropriate, and does not mean here that Dobson's spectrum should be attributed to GCI. Even though the *Resale Agreement* provides GCI with [REDACTED], this is consistent with the general practice associated with resale arrangements to provide a reseller with the ability to accommodate technical and operational changes to the network and does not provide GCI with the ability to control these changes.¹⁷⁴ In the *Resale Agreement*, Dobson agrees [REDACTED].¹⁷⁵ This provision does not give GCI any control over Dobson's decisions with regard to the use of its spectrum or the development of its network, and thus does not give rise to any potential competitive harm. The *Letter of Intent*, which by its own terms is merely an agreement to negotiate in good faith, likewise does not give GCI any control over Dobson's business decisions. Indeed, the fact that GCI and Dobson have reached no agreement on any of the topics in the *Letter of Intent* in almost two and a half years demonstrates that GCI does not have the ability to influence Dobson's network decisions. Finally, we observe that even were Dobson ultimately to implement the network and service enhancements suggested as possibilities

¹⁶⁹ Applicants March 1, 2006 Joint Opposition at 12-14; Applicants August 8, 2006 Joint Opposition at 15- 22; Applicants September 13, 2006 Joint Response at 15-20.

¹⁷⁰ *Letter of Intent* at 1-2.

¹⁷¹ Applicants September 13, 2006 Joint Response at 19.

¹⁷² See *DoCoMo-Guam Cellular Order*, FCC 06-167 at 17 ¶ 22; *ALLTEL-Midwest Order*, FCC 06-146 at 19 ¶ 33; *Sprint-Nextel Order*, 20 FCC Rcd at 13991 ¶ 58; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13070-71 ¶ 38; *Cingular-AT&T Wireless Order*, 20 FCC Rcd at 21563 ¶ 92.

¹⁷³ See Section IV.B.1(d), *supra*.

¹⁷⁴ *Resale Agreement* at Art. I, 3(b)(v). To the extent that this [REDACTED] raises the potential for coordinated interaction, we address that issue below. See Section IV.B.3(b), *infra*.

¹⁷⁵ *Resale Agreement* at Art. I, 9 (b). See also [REDACTED], Art. III, 18 [REDACTED].

in the *Letter of Intent*, GCI still would not have any control over Dobson, and the network improvements could result in public interest benefits in providing additional services to the public. Having requested and reviewed the documents most relevant to our examination of the GCI-Dobson relationship, we do not believe additional information is necessary at this time, and we deny the requests of MTA Wireless and ACS Wireless that the Commission seek additional information on this matter¹⁷⁶ as well as their requests for additional conditions on the *Resale Agreement* and *Letter of Intent*.¹⁷⁷

55. *SprintCom's 10 MHz of PCS spectrum in Anchorage.* MTA Wireless asserts that 10 MHz of PCS spectrum in the Anchorage market held by SprintCom, a subsidiary of Sprint Nextel, should be attributed to GCI when the Commission considers spectrum aggregation.¹⁷⁸ MTA Wireless bases its argument on its and ACS Wireless's joint contention that GCI will be acquiring control of Alaska DigiTel under the proposed transaction, and that Alaska DigiTel currently is providing roaming and other services to Sprint Nextel.¹⁷⁹ Both argue that GCI's interests will be able to competitively align itself with SprintCom, increasing its market power.¹⁸⁰ Further, MTA Wireless and ACS Wireless argue that, even though both the Alaska DigiTel-Sprint Nextel *Service Agreement* will terminate in December 2006, the future status of the joint network¹⁸¹ is unknown, and therefore there may be an ongoing relationship between Sprint Nextel and Alaska DigiTel.¹⁸² MTA Wireless claims the post-termination status of the joint network may be relevant to the Commission's analysis of this transaction.¹⁸³

¹⁷⁶ Of course, we note that were GCI ultimately to seek to acquire Dobson, which is not before us, we would attribute Dobson's spectrum to GCI when evaluating potential competitive concerns.

¹⁷⁷ This includes any condition relating to the spectrum leasing arrangements that, as we discuss elsewhere, are consistent with Commission policies. See Section IV.B.4(a), *infra*. Also, we have already taken GCI's leased spectrum into account in evaluating the spectrum aggregation issues related to this proposed transaction when we attributed all of the leased spectrum to GCI. See paras. 44-45, *supra*.

¹⁷⁸ MTA Wireless August 2, 2006 Comments at 4. SprintCom holds the 10 MHz D-block PCS license in BTA014 Anchorage, Alaska.

¹⁷⁹ ACS Wireless July 21, 2006 Comments/Petition at 6; ACS Wireless December 4, 2006 Comments at 2. ACS Wireless and MTA Wireless argue that the Commission should request the Applicants to submit any agreements it has with Sprint Nextel concerning the use by Sprint Nextel of Alaska DigiTel's facilities in Alaska as well as any other cooperative arrangements between or among the parties for the provision of mobile telephony services. See *id.* at 14; MTA Wireless August 2, 2006 Comments at 4. In the *Agreement Between Applicants, MTA Wireless, and ACS Wireless* Alaska DigiTel agreed to [REDACTED]. See *Agreement Between Applicants, MTA Wireless, and ACS Wireless* at 2. Alaska DigiTel provided the *Roaming Agreement* and the *Service Agreement* to MTA Wireless and ACS Wireless. See MTA Wireless September 6, 2006 Comments at 25; ACS Wireless September 6, 2006 Comments at 17-18 n.58. On October 10, 2006, Alaska DigiTel filed a letter stating that they had provided Wireless Telecommunications Bureau staff with copies of the Sprint-Alaska DigiTel Roaming Agreement and Service Agreement. See Sprint Agreement Letter.

¹⁸⁰ ACS Wireless July 21, 2006 Comments/Petition at 6; MTA Wireless August 2, 2006 Comments at 4.

¹⁸¹ [REDACTED] See [REDACTED] at 2. [REDACTED].

¹⁸² MTA Wireless September 6, 2006 Comments at 27; ACS Wireless September 6, 2006 Comments at 17- MTA 18 n.58

¹⁸³ MTA Wireless September 6, 2006 Comments at 27-28.

56. The Applicants argue that the Commission should reject MTA Wireless's and ACS Wireless's arguments that are based upon the *Roaming Agreement* and the *Service Agreement* between Sprint Nextel and Alaska DigiTel. The Applicants contend that MTA Wireless even concedes that the *Service Agreement* expires in December 2006 and that notice has been given that this agreement will not be renewed. Therefore, the Applicants reason that MTA Wireless's and ACS Wireless's contentions amount to unsupported speculation that these agreements would be harmful to competition.¹⁸⁴

57. After review of the record, including the *Roaming Agreement* and the *Service Agreement*, we do not find evidence that there will be an ongoing relationship between Sprint Nextel and Alaska DigiTel that would result in competitive harm. Furthermore, the provisions of the *Roaming Agreement* do not provide Alaska DigiTel with control or influence over Sprint Nextel spectrum in Anchorage, and therefore we conclude that, post-transaction, GCI will not have either control or influence over the Sprint Nextel spectrum. Lastly, on [REDACTED], Sprint Nextel provided notice to Alaska DigiTel that it was terminating the *Service Agreement*, and therefore the *Service Agreement* would expire on December 15, 2006.¹⁸⁵ Further, the *Service Agreement* provides specific termination provisions that require: [REDACTED].¹⁸⁶ Therefore, [REDACTED], the joint network would no longer exist since Sprint Nextel and Alaska DigiTel would regain sole possession of their respective facilities/sites.¹⁸⁷

Paragraphs 62-64 are revised to read:

62. MTA Wireless and ACS Wireless both argue that there currently are four competitors in the Anchorage market – ACS Wireless, Alaska DigiTel, Dobson, and GCI (as a reseller) – and that this transaction would result in a reduction of actual competitors from four to three, resulting in competitive harm.¹⁹⁸ MTA Wireless and ACS Wireless also argue that because of the Alaska DigiTel-Sprint Nextel and the GCI-Dobson relationships, respectively, the Commission should conclude that, post-transaction, there would only be two competing groups of mobile telephony carriers in the Anchorage market – the GCI-Alaska DigiTel-Dobson-Sprint Nextel group and the ACS Wireless group.¹⁹⁹

¹⁸⁴ Applicants September 13, 2006 Joint Response at 26-27.

¹⁸⁵ See Notice of Service Agreement Termination Letter.

¹⁸⁶ See *Service Agreement* at 5.

¹⁸⁷ [REDACTED] Since the *Letter of Intent* does not demonstrate that GCI would have access to Sprint Nextel's spectrum, it similarly does not persuade us that we should attribute Sprint Nextel's spectrum to GCI.

¹⁹⁸ MTA Wireless Petition to Deny at 5-6; MTA Wireless December 4, 2006 Comments at 4.

¹⁹⁹ MTA Wireless August 2, 2006 Comments at 4; MTA Wireless December 4, 2006 Comments at 4; ACS Wireless December 4, 2006 Comments at 2. For discussion of GCI-Dobson relationship, see paras. 50-54, *supra*. For discussion of the Alaska DigiTel and Sprint Nextel relationship, see paras. 55-57, *supra*.

63. ACS Wireless analyzes the impact of this proposed transaction on market concentration based on the assumption that GCI is a fully independent competitor in the market. In particular, using the subscriber totals submitted by GCI and Alaska DigiTel plus its own subscriber data for itself and Dobson, ACS Wireless calculates the HHI and the change in HHI that would result from the transaction in three Boroughs – Anchorage, Juneau, and Matanuska-Susitna. ACS Wireless argues that the HHI increases and the overall HHI totals far exceed the levels found acceptable in prior proceedings. More specifically, the estimates reveal a post-transaction HHI [REDACTED] in all three markets, and a change in HHI [REDACTED]. ACS Wireless concludes that these estimates demonstrate a significant potential for anticompetitive effects.²⁰⁰

64. The Applicants argue that, both pre- and post-transaction, there will be four primary providers of mobile telephony service – ACS Wireless, Alaska DigiTel, Dobson, and GCI reselling over Dobson’s network – and that Alaska DigiTel will continue to compete on all aspects of providing mobile telephony service, including price. Also, the Applicants argue that ACS Wireless fails to show any significant potential for anticompetitive effects based on the HHI measure of market concentration. The Applicants reject ACS Wireless’s contention that the estimated HHI increases and overall post-transaction HHI totals far exceed the levels found acceptable in prior proceedings. The Applicants further argue that none of the data put forth by ACS Wireless supports either of the two alternative theories of possible competitive harm recognized by the Commission – namely, unilateral effects or coordinated interaction – in any of the three local geographic markets analyzed. The Applicants also stress that the combined GCI-Alaska DigiTel would have [REDACTED] in Anchorage. Similarly, the Applicants note that the combined GCI-Alaska DigiTel market share in Matanuska-Susitna [REDACTED].²⁰¹

Paragraph 76 is revised to read:

76. After reviewing the agreements submitted into the record, we conclude that GCI’s and Alaska DigiTel’s relationships with other carriers is unlikely, post-transaction, to provide either GCI or Alaska DigiTel with the incentive or ability to raise prices, reduce service quality, or restrict output in the mobile telephony market. Post-transaction, GCI will continue to resell Dobson mobile telephony services subject to the *Resale Agreement* which includes restrictions on the [REDACTED] for those services.²²⁰ Therefore post-transaction, consumers will continue to choose from three independent actual competitors – Alaska DigiTel, ACS Wireless, and Dobson – as well as GCI as a reseller. Further, in each of the four CMAs in Alaska, [REDACTED].²²¹ Therefore, it is unlikely that, post-transaction, GCI or Alaska DigiTel would be able to successfully unilaterally raise price or reduce service in any relevant market in Alaska.

²⁰⁰ ACS Wireless September 6, 2006 Comments at 20-21, Exhibit B; Declaration of Robert Doucette filed on behalf of ACS Wireless, Inc. (Sept. 6, 2006).

²⁰¹ Applicants September 13, 2006 Joint Response at 20-22.

²²⁰ See *Resale Agreement* Art. I, 2(a), 3(b)(iv).

²²¹ Using June 2006 NRUF data and excluding GCI’s subscribers from market share calculations, [REDACTED].

Paragraphs 78-84 are revised to read:

78. MTA Wireless argues that this transaction requires an analysis of potential coordinated interaction because there is a loss of a competitor in the Anchorage market²²⁵ and the relationship between Dobson and GCI meets the Commission's test for explicit and tacit collusion.²²⁶ Further, MTA Wireless and ACS Wireless contend that the Lease Agreements and the Resale Agreement reflect an extraordinary degree of cooperation between GCI and Dobson.²²⁷ In particular, they argue that the recitals to the Resale Agreement reflect a larger cooperative agreement between GCI and Dobson that encompasses [REDACTED], and that the individual agreements are "of greater value when taken together than the sum of each arrangement separately."²²⁸ MTA Wireless and ACS Wireless argue that the parties have agreed to [REDACTED].²²⁹ [REDACTED].²³⁰ [REDACTED].²³¹

79. MTA Wireless also argues that the Lease Agreements, the Resale Agreement, and the Letter of Intent show the extent of cooperation between GCI and Dobson, and concludes that the strategic relationship between Dobson and GCI represents coordinated interaction of direct competitors.²³² MTA Wireless claims that Dobson [REDACTED].²³³

80. ACS Wireless argues that, post-transaction, GCI would have a significant incentive and ability to coordinate with other firms.²³⁴ Further, ACS Wireless argues that, given the relationship between GCI and Dobson, any explicit or tacit collusive behavior would have a significant impact on the mobile telephony market in Alaska. ACS Wireless also argues that GCI would have strong financial incentives to coordinate its GCI-branded offering with Alaska DigiTel and would not treat Alaska DigiTel as a fully separate competitor.²³⁵ ACS Wireless contends that GCI's 78 percent ownership interest in Alaska DigiTel gives GCI incentives to minimize direct product or service competition wherever possible. Further, ACS Wireless claims that it would not be in GCI's interest to cannibalize its own wireless service, especially its

²²⁵ MTA Wireless Petition to Deny at 14; MTA Wireless March 13, 2006 Reply at 11.

²²⁶ MTA Wireless July 24, 2006 Comments at 18-19.

²²⁷ MTA Wireless July 24, 2006 Comments at 9-10, 17-18; ACS Wireless September 6, 2006 Comments at 8.

²²⁸ MTA Wireless July 24, 2006 Comments at 10; ACS Wireless September 6, 2006 Comments at 9.

²²⁹ MTA Wireless July 24, 2006 Comments at 17; MTA Wireless September 6, 2006 Comments at 24; ACS Wireless September 6, 2006 Comments at 9-11. The *Resale Agreement* provisions include: [REDACTED]. See *Resale Agreement*; MTA Wireless July 24, 2006 Comments at 11-14. Further, GCI uses the spectrum leasing agreements as a means to meet its construction deadlines. See MTA Wireless July 24, 2006 Comments at 15-16; see also paras. 87-90, *infra*.]

²³⁰ MTA Wireless July 24, 2006 Comments at 17.

²³¹ ACS Wireless September 6, 2006 Comments at 11.

²³² MTA Wireless July 24, 2006 Comments at 14, 17; MTA Wireless September 25, 2006 Comments at 1-5. MTA Wireless and ACS Wireless argue that the *Letter of Intent* further supports their claims of a close coordinated relationship between Dobson and GCI. See MTA Wireless September 25, 2006 Comments at 1-5; ACS Wireless September 27, 2006 Comments at 2-4. See also paras. 50-54, *supra*.

²³³ MTA Wireless July 24, 2006 Comments at 14-15.

²³⁴ ACS Wireless September 6, 2006 Comments at 13.

²³⁵ ACS Wireless July 21, 2006 Comments/Petition at 8-9; ACS Wireless September 6, 2006 Comments at 35.

bundled service offerings, because GCI needs to offer its own wireless product in its bundled services to compete effectively. Therefore, according to ACS Wireless, if GCI, through its investment, does strengthen Alaska DigiTel, it is likely to do so in a coordinated manner.²³⁶

81. The Applicants argue that although there are areas where Dobson and GCI are coordinating, they do not have an adverse effect on the public, and that GCI can and does compete against Dobson for retail customers. Further, the Applicants assert that Dobson and GCI have entered into arms-length agreements with each other that cover a full range of products and services. However, the Applicants argue that MTA Wireless and ACS Wireless have failed to prove that these types of agreements are anticompetitive under the *DOJ/FTC Merger Guidelines*.²³⁷ Also, the Applicants contend that, in Anchorage, neither GCI nor Alaska DigiTel would be one of the two leading carriers, and therefore the transaction would be unlikely to facilitate coordinated interaction. Finally, the Applicants argue that neither MTA Wireless nor ACS Wireless has provided any evidence that coordinated interaction has or would take place as a result of this transaction.²³⁸

82. As a result of our analysis, we do not find that there would be an increased likelihood of coordinated interaction due to a loss of an actual, facilities-based service provider as a result of this transaction.²³⁹ Further, we find that the existing relationship between Dobson and GCI is not a result of this transaction, and that allegations raised by MTA Wireless and ACS Wireless are not transaction specific. However, we find that coordinated interaction would be more likely and more successful because of certain provisions of the *Resale Agreement* combined with GCI's seat on Alaska DigiTel's Board of Managers.

83. From our review of the *Resale Agreement*, certain provisions indicate that GCI's investment in Alaska DigiTel/Denali may provide the ability and incentive for coordinated interaction. In order to meet various *Resale Agreement* provisions, GCI has [REDACTED] may provide an opportunity for coordinated interaction between Dobson and Alaska DigiTel through GCI as a conduit of market-sensitive information.²⁴⁰ GCI also receives other information about [REDACTED].²⁴¹ [REDACTED].²⁴² [REDACTED].²⁴³

84. Further, pursuant to the *Resale Agreement*, both Dobson and GCI have "relationship Officers" that provide the easy exchange of information regarding [REDACTED].²⁴⁴ In addition, the *Resale Agreement* [REDACTED].²⁴⁵

²³⁶ ACS Wireless July 21, 2006 Comments/Petition at 8-9.

²³⁷ Applicants September 13, 2006 Joint Response at 16-18.

²³⁸ Applicants September 13, 2006 Joint Response at 21-22 (citing the *Sprint-Nextel Order*, 20 FCC Rcd at 13999 ¶ 85).

²³⁹ See paras. 34-35, 65, *supra*.

²⁴⁰ *Resale Agreement* at Art. I, 3(b)(v).

²⁴¹ *Resale Agreement* at Art. I, 4, 7, and 9.

²⁴² *Resale Agreement* at Art. I, 10(a)(ii).

²⁴³ *Resale Agreement* at Art. I, 10(a)(iii); Billing Access Agreement.

²⁴⁴ *Resale Agreement* at Art. I, 8(a)(i).

²⁴⁵ *Resale Agreement* at Art. I 8(a)(ii).

Paragraphs 87-88 are revised to read:

87. MTA Wireless and ACS Wireless contend that GCI is “warehousing” the spectrum associated with its broadband PCS license because GCI itself is only using that spectrum to provide fixed wireless service.²⁴⁸ MTA Wireless contends that GCI instead should be using the PCS spectrum to provide mobile telephony service because of its particular suitability for that purpose, and because other spectrum not as well-suited for mobile services could be used to provide fixed wireless services.²⁴⁹ MTA Wireless also claims that the spectrum leasing between GCI and Dobson further illustrates GCI’s close ties to Dobson in that it ensured that GCI would meet its build-out requirement without investing in its own facilities-based network.²⁵⁰ Although MTA Wireless acknowledges that GCI has not committed any “technical infractions” in its use of PCS spectrum, MTA Wireless nonetheless contends that GCI’s action does not eliminate “the effect of warehousing this spectrum from its original and primary intended use – mobile telephony.”²⁵¹ MTA Wireless requests that the Commission require GCI to divest 20 MHz of its PCS license as well as the 15 MHz of the Denali license because this spectrum is not currently being used to provide mobile telephony service.²⁵² ACS Wireless requests that the Commission require some divestiture of spectrum to reduce post-transaction spectrum concentration.²⁵³

88. In response, the Applicants assert that the Commission’s rules do not require that a broadband PCS license be used to provide mobile telephony services, and expressly permit the use of that license to provide fixed wireless service.²⁵⁴ As for MTA Wireless’s claims about spectrum leasing, the Applicants point out that Commission rules expressly allow it to rely on any build-out by its spectrum lessee to meet the licensee’s construction requirements.²⁵⁵

Paragraph 90 is revised to read:

90. The allegations regarding GCI’s spectrum lease with Dobson similarly are not based on any violation of the Commission’s buildout policies. The Commission’s secondary markets rules expressly permit a licensee to rely on any buildout performed by its spectrum lessee

²⁴⁸ MTA Wireless Petition to Deny at 12-15; MTA Wireless March 13, 2006 Reply at 12; ACS Wireless September 6, 2006 Comments at 18-20. The Alaska Telephone Association alleges that GCI desires to “hoard statewide, wireless spectrum in Alaska by acquiring a ‘non-controlling’ 78% ownership of Alaska DigiTel.” Alaska Telephone Association Comments at 2.

²⁴⁹ See MTA Wireless Petition to Deny at 12.

²⁵⁰ MTA Wireless July 24, 2006 Comments at 15; MTA Wireless December 4, 2006 Comments at 4.

²⁵¹ MTA Wireless March 13, 2006 Reply at 13.

²⁵² MTA Wireless August 2, 2006 Comments at 10-11; MTA Wireless December 4, 2006 Comments at 4. MTA Wireless argues that this capacity should be made available for lease or acquisition. MTA Wireless December 4, 2006 Comments at 5.

²⁵³ ACS Wireless September 6, 2006 Comments at 37.

²⁵⁴ Applicants March 13, 2006 Joint Opposition at 16.

²⁵⁵ Applicants August 8, 2006 Joint Opposition at 23-24.

in order to meet applicable construction requirements pertaining to the license.²⁵⁹ Finally, Commission records show that GCI filed in a timely manner its five-year and ten-year construction notifications, and that GCI has met the applicable construction requirements.²⁶⁰ Based on the filings before us, we believe that GCI was relying on the buildout by its spectrum lessee Dobson to meet the ten-year construction requirement.²⁶¹

Paragraphs 100-101 are revised to read:

100. ACS Wireless argues that provisions in the *Resale Agreement*, the *Letter of Intent*, and the *Operating Agreement* further support its allegation that, post-transaction, GCI is likely to tie transport and roaming. According to ACS Wireless, under the *Resale Agreement*, GCI has already implemented a strategy to [REDACTED].²⁹⁷ ACS Wireless also argues that GCI can bundle Dobson's wireless services with its own services at a blended rate. Further, ACS Wireless argues that the *Operating Agreement* aligns GCI's and Alaska DigiTel's financial interests through the sharing of Alaska DigiTel's profits and losses and the consolidation of the two companies' financial statements, and that this consolidation would permit any losses from pricing one service below cost to be offset by gains from the other bundled services.²⁹⁸ ACS Wireless also argues that GCI has the ability to charge below-cost prices for transport services because Section 112 of Title I of Division J of the Consolidated Appropriations Act, 2005 does not affect GCI's prices for interstate special access services, and therefore GCI would have flexibility to offer below-cost transport pricing if it ties wholesale transport and roaming services.²⁹⁹

²⁵⁹ See generally Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets, *Report and Order*, 18 FCC Rcd 20604 (2003) ("*Secondary Markets First R&O*"), at 20653 ¶¶ 114-115 (spectrum manager leases), 20665 ¶ 146 (long-term *de facto* transfer leases); see also 47 CFR § 1.1920(d)(5)(i) (spectrum manager leases), 1.9030(d)(5)(i) (long-term *de facto* transfer leases). GCI and Dobson have entered into a long-term *de facto* transfer leasing arrangement. In establishing the spectrum leasing rules in 2003, the Commission expressly stated that "[w]e will allow licensees using [the long-term *de facto* transfer] leasing option to rely on the activities of their spectrum lessees for purposes of complying with the build-out requirements that are conditions of the license authorization." *Secondary Market First R&O*, 18 FCC Rcd at 20665 ¶ 147; see also 47 C.F.R. § 1.9030(d)(i) (rules pertaining to *de facto* transfer leasing arrangements provides that "[t]he licensee may attribute to itself the build-out or performance activities of its spectrum lessee(s) for purposes of complying with any applicable build-out or performance requirement").

²⁶⁰ For its five-year notification in June 2000, GCI reported that it had constructed a fixed wireless network in Anchorage, Alaska. See Notification of Construction of KNLF298 by GCI Communication Corporation, ULS File No. 0000175068 (filed June 23, 2000). This network consisted of three sites and covered over one-third of the population of MTA049-Alaska. For its ten-year construction notification in May 2005, GCI reported that it met its buildout obligations based on a constructed GSM network that covered over two-thirds of the population of MTA049-Alaska. See Notification of Construction of KNLF298 by GCI Communication Corporation ULS File No. 0002181339 (filed May 31, 2005). GCI's ten-year notification does not specify whether it is providing a mobile or a fixed service, but its filing demonstrates a sufficient signal strength to serve two-thirds of the population in its licensed area regardless of whether the service is fixed or mobile.

²⁶¹ [REDACTED].

²⁹⁷ ACS Wireless [REDACTED]. ACS Wireless September 6, 2006 Comments at 23; *Resale Agreement*, Art. II, 2(a)(ii).

²⁹⁸ ACS Wireless September 6, 2006 Comments at 22-24.

²⁹⁹ ACS Wireless August 14, 2006 Comments at 2.

101. In addition, ACS Wireless claims that there is no prohibition in the *Operating Agreement* to prevent GCI from bundling its and Alaska DigiTel's services.³⁰⁰ ACS Wireless also claims that the *Letter of Intent* shows that GCI is already employing strategies to [REDACTED].³⁰¹ ACS Wireless and MTA Wireless argue that in the *Letter of Intent*, Dobson and GCI commit to enter negotiations to [REDACTED].³⁰²

Paragraph 117 is revised to read:

117. Using the analytical standards outlined above, we find that the Applicants' proposed transaction poses a risk of coordinated interaction. That is, certain provisions of the Resale Agreement between GCI and Dobson indicate that GCI's investment in Alaska DigiTel/Denali may provide the ability and incentive for coordinated interaction between Dobson and Alaska DigiTel. Under the Resale Agreement, GCI will have advance notice of competitively sensitive information about [REDACTED], among other things, and could serve as the conduit for such information. The proposed relationship between GCI and Alaska DigiTel, as outlined by the Operating Agreement and Management Agreement, under which GCI occupies a position on Alaska DigiTel's Board of Managers, increases the opportunity for such competitively sensitive information to be conveyed between Alaska DigiTel, GCI, and Dobson, resulting in coordinated interaction among these service providers.

Paragraph 1 of Appendix A is revised to read:

1. The Agreement entered into between GCI and Dobson Cellular Systems, Inc. ("Dobson") as of July 26, 2004 ("Resale Agreement") and the concurrent letter of intent ("LOI") associated therewith shall be amended prior to the consummation of the transaction contemplated by the Joint Applications to provide that:

(a) Any Non-Public Competitively Sensitive Information, as defined in paragraph 7 herein (which definition shall be incorporated into the Resale Agreement and the LOI), provided by Dobson to GCI shall be shall be treated as "Confidential" by GCI.

FEDERAL COMMUNICATIONS COMMISSION

Fred B. Campbell, Jr.
Chief, Wireless Telecommunications Bureau

³⁰⁰ ACS Wireless September 6, 2006 Comments at 22-23; *see also Operating Agreement* Art. 5, 5.2, 10.5.

³⁰¹ ACS Wireless September 27, 2006 Comments at 4.

³⁰² ACS Wireless September 27, 2006 Comments at 4; MTA Wireless September 25, 2006 Comments at 3; *see also Letter of Intent* at 2.